

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TOMMY FUENTEZ,	)	1:02-CV-05948 GSA HC
aka TOMMY FUENTES,	)	
	)	
Petitioner,	)	ORDER AMENDING JUDGMENT
	)	(Fed. R. Civ. P. 52(b))
v.	)	
	)	
FRED BROWN, Warden,	)	
	)	
Respondent.	)	
_____	)	

On October 4, 2010, the Court issued Order Denying Petition for Writ of Habeas Corpus With Prejudice. On October 14, 2010, Respondent filed the instant motion to alter or amend judgment pursuant to Fed. R. Civ. P. 52(b). Fed. R. Civ. P. 52(b) provides that the Court may amend its findings and judgment on a party's motion filed no later than 28 days after entry of judgment. Respondent moves to clarify the Court's order by changing the terminology of the finding from "ineffective performance" to "deficient performance." The Court finds Respondent's arguments persuasive. According to Strickland v. Washington, 466 U.S. 668, 691 (1984), "any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution." In this case, the Court determined that defense counsel's performance was deficient but that no prejudice resulted therefrom.

1 Accordingly, IT IS HEREBY ORDERED that the Order of October 4, 2010, is AMENDED  
2 at pages 18 and 21 to reflect a finding of “deficient” performance rather than “ineffective”  
3 performance by defense counsel.

4  
5 IT IS SO ORDERED.

6 **Dated: October 22, 2010**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE